



## SOCIAL JUSTICE AND INDIGENOUS RIGHTS

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### INTRODUCTION

In India, Indigenous peoples are often referred as *adhivasis* or *schedule tribe* and are considered to be the original inhabitants of a country or a particular area<sup>1</sup>.

The Anthropological survey of India under the project 'people of India project' identifies 461 ethnic groups as scheduled Tribes of India, and there are considered to be India's indigenous peoples. In mainland India, the scheduled Tribes are usually referred to as *Adivasi's*. There are, however, many more ethnic groups that would qualify for scheduled Tribes status but which are not officially recognised. Estimates of the total number of tribal groups are as high as 635. India has several laws and constitutional provisions, such as the fifth schedule for mainland India and the sixth schedule for certain areas of North - East India, which recognise Indigenous peoples rights to land and self-governance. The laws aimed at protecting indigenous peoples have numerous shortcomings and their implementation is far from satisfactory. Indigenous peoples continue to face civil and political rights violation, land alienation, displacement and false prosecution for accessing minor forest produce. As India's becoming economy requires more resources, land and resources belonging to indigenous people have been grabbed, resulting in a strong sense of alienation among them and further exacerbating conflicts. India has a long history of indigenous peoples movements aimed at asserting their rights.

With the internationalisation of the rights and privileges of indigenous people, the use of the term indigenous has come to be critically examined or even challenged in the Indian context. The meaning and definition of the term used earlier and today are not identical though they overlap in some characteristics. The term indigenous to be used in such a case for Tribes or other groups and communities would overcome some of the inherent conceptual problems.<sup>2</sup>

In India, Indigenous peoples are often referred as *adhivasis* or *schedule Tribe* and are considered to be the original inhabitants of a country or a particular area. As per the census of 2011 there are about 705 ethnic tribes which has been notified in 30 states and union territory of India. The total tribal population is 8.6 % of 104 million Indian population. The constitution of India has laid down provisions such as the fifth schedule, for central India, which gives rights to the indigenous people to land and self-governance. The Indian government had voted for the United Nations declaration on the Rights of Indigenous peoples on a condition that after independence all the Indians are considered indigenous to avoid being divisive and undermining

as India has a diverse culture so it becomes pertinent to protect the rights of every citizen to maintain the unity of the nation.<sup>3</sup>

In India 90% of the tribal population live in the rural areas and does not necessarily fall under Hindu caste hierarchy, as most of the tribal dwell in the forest areas and have their distinct cultural and religious practices. In contrast to that the scheduled caste in India are socially stratified under the four-fold varna system of Hinduism, often the lowest in the order i.e. *sudras*, face societal exclusion in the form of untouchability. In the case of scheduled tribe, they have remained secluded from any physical or social contact from the mainstream thus preferred living in isolation. Every tribe in India has a distinct and unique identity and can be distinguished through its religious practices. But one can attach a commonness of these tribes in the form of nature worship which makes them come under the roof of being termed as *totemic tribe*. The dogma of tribal people revolves around spiritualism and supernaturalism. The very concept of pantheon involves nature with immortal ancestral spirits and deities dwelling on it forms an integral part of their customs and traditions.<sup>4</sup>

The challenge for indigenous rights advocates in India is the historically accepted view that all Indians are Indigenous. In responding to a criminal appeal case involving physical and mental abuse of a tribal woman, the 2010 supreme case of *Kailas & others v. State of Maharashtra* observed that scheduled tribes (Indigenous peoples) are the original inhabitants, constitute 8% of the population, and that the *Mundari* language predated the Dravidian languages making pre-Dravidian aborigines the ancestors of the present Tribes or *adhivasis* (Indigenous peoples) who were prosecuted in the 17<sup>th</sup> century.

The rights of Indigenous peoples are guaranteed within the Indian constitution framework. Part IV of the constitution lays down the directive principles of state policy that are 'fundamental to the governance of the country', and include 'promotion of educational and economic interests of scheduled castes, scheduled Tribes and other weaker sections which must be enforced as laws by the state. India's constitution provides special protection and assistance to vulnerable groups in India including indigenous peoples' land rights and self-governance and are applicable to designated parts of the country with high tribal population including central India and the North - East states. Part III of the constitution acknowledges fundamental Rights and prohibition laws that combat discrimination and promote "equality before the law or the equal protection of laws, non-discrimination against any citizen on grounds only

of religion, race, caste, sex, place of birth or any of them, special provision for the advancement of any socially and educationally backward class of citizens as well as scheduled castes and scheduled Tribes.<sup>5</sup>

Continuing land rights violations in 2013 the prime minister established the high-level committee on socio-economic, health and educational states or the tribes of India. In May 2014 a report was released with recommendations including amendments to laws to allow scheduled Tribes control over their own resources and the preservation of further alienation of land. However, the government delayed making this report publicly and widely available and has failed to effectively implement the recommendation as demonstrated by the following example.

In August 2015 the government opposed the reinstatement of the indigenous peoples land acquisition ordinance (effective January 1, 2014) while the ordinance was allowed to lapse, parts of the legislation were salvaged and an amendment included, which was the right to fair compensation and transparency in land acquisition, Rehabilitation and resettlement (amendment) ordinance, to exempt five types of projects from receiving consent and completing social impact assessments. This amendment calls for five categories to be exempt. Article 41 of the Indian constitution states that: "as far as possible, no acquisition of land shall be made in the scheduled areas" and that families would be resettled "preferably in the same scheduled area in a compact block so that they can retain their ethnic, linguistic and cultural identity". However, there is a lack of legal redress for displaced Indigenous persons. Schedule five, a special provision of the constitution which ensures land rights to scheduled Tribes has been ineffective, as the majority of indigenous lands in 2015 remain unrestored and alienated.

To circumvent legal difficulties in acquiring tribal lands private commercial use, states like Jharkhand are making efforts to amending two of its tribal land statutes, Chhota Nagpur tenancy Act Santhal Pargana Tenancy Act. Having failed to adopt the amendments in the July 2016 state assembly session, the Jharkhand government has proposed ordinances i.e executive action from the president of India, that bypass democratic and legislative norms of law making. while the executive action is now pending, various indigenous peoples groups and activists in Jharkhand continue to protest government's attempt to allowing acquisition of tribal agricultural land for non-agricultural purposes.<sup>6</sup>

On study for instance found that only 12% of Bhil addivasis in Gujarat could survive based on their agriculture land holdings alone. The resulting desperation forces addivasis in most parts of central India into seasonal migration for wage labour, which is often in addition to as combined with debt bondage to particular employers. The same study on Bhil in Gujarat found that 85% of families were forced to migrate every year to earn enough to survive, while a report from Maharashtra put the figure for addivasis in that state at 80%. There are no official figures on how many people engage in seasonal migration in India, but estimates say that around 30 million people migrate every year, and the figure is rising. Conditions of work for such

migrant workers are abysmal in many areas, with hardly any shelter provided, food is water in short supply, and work days that are often 14 to 16 hours long. Sexual abuse of women is particularly common, as well as brutal violence against those who resist exploitation. Addivasis women are also often forced to become sex workers, sometimes at or near migrant worksites' and sometimes in their home areas.<sup>7</sup>

India is home to the largest population of indigenous peoples of any country in the world. Roughly a quarter of the world's indigenous population around 80 million people are scattered across India, their numbers a staggering diversity of ethnicities, cultures and socio-economic situations. They range from some of the last unconnected Indigenous communities in the world, like the Sentinels of the Andamans, to some of the largest, such as the Gonds and Santhals of central India. They include not only communities who live under conditions of extreme destitution but also communities with social indicators well above the national average. But across circumstances and areas, like other indigenous communities around the world, India's indigenous people do share one characteristic social, political and economic marginalization.

In recognition of this fact and reflecting more than a century and a half of conditions struggled by indigenous people, India has a panoply of laws, policies and constitutional provisions aimed at protecting the rights of such communities. Yet India is also distinguished by the extreme reluctance of the government to Acknowledge or accept the international framework for such protections, embodied primarily in international labour organization (ILO) convention no.169 on indigenous peoples (UNDRIP) 2007. while India is a signatory to (ILO) convention no.169 on indigenous and tribal peoples, 1989 and the United Nations Declaration on the Rights of Indigenous peoples (UNDRIP), 2007. While India is a signatory to ILO convention No.107. On indigenous and tribal population (the predecessor to convention 169) and voted in favour of the UNDRIP, it has adamantly insisted that it's own Indigenous peoples cannot claim status or protection under these laws. The government rejects the very term 'indigenous peoples', all Indians are Indigenous and is particularly hostile to any reference to the rights of Indigenous people to autonomy, self governance of self determination. This is despite the fact that Indians own laws provide for varying degree of such protection in some cases, far reaching to certain communities.

The tribal have seldom received justice under the constitution's provisions. This is true of almost all laws forest, revenue, excise, criminal or civil laws which have two major flaws: they have taken away tribal rights to land, forest and resources, they have failed to recognise the tribal's traditional legal system and management practices in regard to either resources or social systems. Even regulations that safeguard indigenous interest have not been faithfully applied, resulting in land alienation being the most important issue to this day. The tribal peoples docility and ignorance in the face of non-tribal exploitation has gradually changed. They are aware of the laws and claim their right.<sup>8</sup>

The government must acknowledge that tribal people have a unique socio-cultural structure, and it must understand and respect their system while creating and executing development programmes. Programmes should be sensitive to tribal requirements and address genuine problems and disputes. It is important to note that the machinery should be free of social and political prejudices against tribal populations. Any disagreement or disruptions between tribal and non-tribal, for example, should be handled by police, revenue, and other authorities who have an anti-tribal or pro-non tribal posture.<sup>9</sup>

Supreme court of India in an appeal case relating to a woman belonging to Bhil community of Maharashtra, who was beaten and paraded naked by four persons belonging to their communities, but the conviction of the accused under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was set aside by the Aurangabad bench of the Bombay High court, the Hon'ble Supreme court, which was rightly shocked and outraged at the shameful parade of a tribal woman on the village road in broad day light, has put forth a thesis that India is a land of migrants and that the pre-Dravidians are the original inhabitants of India. According to the thesis "India is broadly a country of immigrants like North America". The court has taken much pain to prove that the Scheduled Tribes preceded the Dravidians. It quotes approvingly from Thurston, author of Caste and Tribes of Southern India (1909) that "It is the pre-Dravidian aborigines and not the later and more cultured Dravidian, who must be regarded as the primitive existing race. The court goes on to conclude, based on the existence of Munda languages belonging to the Austro family in North India, that "according to the evidence now available. The Austro element is the oldest and it has been overlaid in different regions by successive waves of Dravidian and Indo-European on the one hand and by Tibeto-Chinese on the other. The thesis appears to base itself on a premise that except for the first entrants to a land all others are immigrants, irrespective of the period of entry. The court's direction was to extend benefits for the social and economic development of the Bhil, they being socially and economically backwards and have been pushed out in the development progress by later entrants. The court used strong words to highlight the injustice done to the tribal people of India, which is a shameful chapter in our country's history and it is now time to undo the historical injustice to them.<sup>10</sup>

While the court in the above case of 2011 was positive about the tribal people being the indigenous or original people of India, his lordship Mr. Y. K. Sabharwal, then Chief Justice of India while addressing the plenary session on 'Rights of Indigenous People' at the 72<sup>nd</sup> International Law Association (ILA) Biennial conference that concluded in Toronto on 8 June 2006, had said that the term 'Indigenous Peoples' was still being debated in India, that there are several difficulties in recognising certain groups as indigenous and that the general perception of India according to which the term 'Indigenous People' is a misnomer in India. Referring to the topic of the session 'Rights of Indigenous People' he said that the Indian experience in protecting the rights of Indigenous People was worth trying in other parts of the world. He pointed out that the

international law concerned regarding indigenous people could be meaningfully addressed in terms of seeking solution only when the existing legal framework of countries like India was taken up for the study as models.<sup>11</sup>

## CONCLUSION

The biggest issue is that requirement of real desire on the part of government administration to improve situation of indigenous peoples of India at the grassroots level. The administration machinery should be free from social and political influence so that genuine problems should be solved with people friendly policies on how indigenous are getting observed into the mainstream of Indian society.

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